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Sixth Committee
Agenda item 75
Report of the International Law Commission on the work of its sixtieth session

Draft resolution

The law of transboundary aquifers

The General Assembly,

Having considered chapter IV of the report of the International Law Commission on the work of its sixtieth session,[1] which contains the draft articles on the law of transboundary aquifers,

Noting that the Commission decided to recommend to the General Assembly (a) to take note of the draft articles on the law of transboundary aquifers in a resolution, and to annex the articles to the resolution; (b) to recommend to States concerned to make appropriate bilateral or regional arrangements for the proper management of their transboundary aquifers on the basis of the principles enunciated in the articles; and (c) to also consider, at a later stage, and in view of the importance of the topic, the elaboration of a convention on the basis of the draft articles,[2]

Emphasizing the continuing importance of the codification and progressive development of international law, as referred to in Article 13, paragraph 1 (a), of the Charter of the United Nations,

Noting that the subject of the law of transboundary aquifers is of major importance in the relations of States,

Taking note of the comments of Governments and the discussion in the Sixth Committee at the sixty-third session of the General Assembly on this topic,

1. *Welcomes* the conclusion of the work of the International Law Commission on the law of transboundary aquifers and its adoption of the draft articles and a detailed commentary on the subject;

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[1] *Official Records of the General Assembly, Sixty-third Session, Supplement No. 10* (A/63/10).
[2] Ibid., para. 49.

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2. *Expresses its appreciation* to the Commission for its continuing contribution to the codification and progressive development of international law;

3. *Also expresses its appreciation* to the International Hydrological Programme of the United Nations Educational, Scientific and Cultural Organization and to other relevant organizations for the valuable scientific and technical assistance rendered to the International Law Commission;[3]

4. *Takes note* of the draft articles on the law of transboundary aquifers, presented by the Commission, the text of which is annexed to the present resolution, and commends them to the attention of Governments without prejudice to the question of their future adoption or other appropriate action;

5. *Encourages* the States concerned to make appropriate bilateral or regional arrangements for the proper management of their transboundary aquifers, taking into account the provisions of these draft articles;

6. *Decides* to include in the provisional agenda of its sixty-sixth session an item entitled "The law of transboundary aquifers" with a view to examining, inter alia, the question of the form that might be given to the draft articles.

Annex

The law of transboundary aquifers

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Conscious of the importance for humankind of life-supporting groundwater resources in all regions of the world,

Bearing in mind Article 13, paragraph 1 (a), of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Recalling General Assembly resolution 1803 (XVII) of 14 December 1962 on permanent sovereignty over natural resources,

Reaffirming the principles and recommendations adopted by the United Nations Conference on Environment and Development of 1992 in the Rio Declaration on Environment and Development[4] and Agenda 21,[5]

Taking into account increasing demands for freshwater and the need to protect groundwater resources,

Mindful of the particular problems posed by the vulnerability of aquifers to pollution,

Convinced of the need to ensure the development, utilization, conservation, management and protection of groundwater resources in the context of the

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[3] Ibid., para. 51.

[4] *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992*, vol. I, *Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex I.

[5] Ibid., annex II.

promotion of the optimal and sustainable development of water resources for present and future generations,

Affirming the importance of international cooperation and good-neighbourliness in this field,

Emphasizing the need to take into account the special situation of developing countries,

Recognizing the necessity to promote international cooperation,

...

Part one
Introduction

Article 1
Scope

The present articles apply to:

(a) Utilization of transboundary aquifers or aquifer systems;

(b) Other activities that have or are likely to have an impact upon such aquifers or aquifer systems; and

(c) Measures for the protection, preservation and management of such aquifers or aquifer systems.

Article 2
Use of terms

For the purposes of the present articles:

(a) "aquifer" means a permeable water bearing geological formation underlain by a less permeable layer and the water contained in the saturated zone of the formation;

(b) "aquifer system" means a series of two or more aquifers that are hydraulically connected;

(c) "transboundary aquifer" or "transboundary aquifer system" means, respectively, an aquifer or aquifer system, parts of which are situated in different States;

(d) "aquifer State" means a State in whose territory any part of a transboundary aquifer or aquifer system is situated;

(e) "utilization of transboundary aquifers or aquifer systems" includes extraction of water, heat and minerals, and storage and disposal of any substance;

(f) "recharging aquifer" means an aquifer that receives a non-negligible amount of contemporary water recharge;

(g) "recharge zone" means the zone which contributes water to an aquifer, consisting of the catchment area of rainfall water and the area where such water flows to an aquifer by run-off on the ground and infiltration through soil;

(h) "discharge zone" means the zone where water originating from an aquifer flows to its outlets, such as a watercourse, a lake, an oasis, a wetland or an ocean.

Part two
General principles

Article 3
Sovereignty of aquifer States

Each aquifer State has sovereignty over the portion of a transboundary aquifer or aquifer system located within its territory. It shall exercise its sovereignty in accordance with international law and the present articles.

Article 4
Equitable and reasonable utilization

Aquifer States shall utilize transboundary aquifers or aquifer systems according to the principle of equitable and reasonable utilization, as follows:

(a) They shall utilize transboundary aquifers or aquifer systems in a manner that is consistent with the equitable and reasonable accrual of benefits therefrom to the aquifer States concerned;

(b) They shall aim at maximizing the long-term benefits derived from the use of water contained therein;

(c) They shall establish individually or jointly a comprehensive utilization plan, taking into account present and future needs of, and alternative water sources for, the aquifer States; and

(d) They shall not utilize a recharging transboundary aquifer or aquifer system at a level that would prevent continuance of its effective functioning.

Article 5
Factors relevant to equitable and reasonable utilization

1. Utilization of a transboundary aquifer or aquifer system in an equitable and reasonable manner within the meaning of article 4 requires taking into account all relevant factors, including:

(a) The population dependent on the aquifer or aquifer system in each aquifer State;

(b) The social, economic and other needs, present and future, of the aquifer States concerned;

(c) The natural characteristics of the aquifer or aquifer system;

(d) The contribution to the formation and recharge of the aquifer or aquifer system;

(e) The existing and potential utilization of the aquifer or aquifer system;

(f) The actual and potential effects of the utilization of the aquifer or aquifer system in one aquifer State on other aquifer States concerned;

(g) The availability of alternatives to a particular existing and planned utilization of the aquifer or aquifer system;

(h) The development, protection and conservation of the aquifer or aquifer system and the costs of measures to be taken to that effect;

(i) The role of the aquifer or aquifer system in the related ecosystem.

2. The weight to be given to each factor is to be determined by its importance with regard to a specific transboundary aquifer or aquifer system in comparison with that of other relevant factors. In determining what is equitable and reasonable utilization, all relevant factors are to be considered together and a conclusion reached on the basis of all the factors. However, in weighing different kinds of utilization of a transboundary aquifer or aquifer system, special regard shall be given to vital human needs.

Article 6
Obligation not to cause significant harm

1. Aquifer States shall, in utilizing transboundary aquifers or aquifer systems in their territories, take all appropriate measures to prevent the causing of significant harm to other aquifer States or other States in whose territory a discharge zone is located.

2. Aquifer States shall, in undertaking activities other than utilization of a transboundary aquifer or aquifer system that have, or are likely to have, an impact upon that transboundary aquifer or aquifer system, take all appropriate measures to prevent the causing of significant harm through that aquifer or aquifer system to other aquifer States or other States in whose territory a discharge zone is located.

3. Where significant harm nevertheless is caused to another aquifer State or a State in whose territory a discharge zone is located, the aquifer State whose activities cause such harm shall take, in consultation with the affected State, all appropriate response measures to eliminate or mitigate such harm, having due regard for the provisions of articles 4 and 5.

Article 7
General obligation to cooperate

1. Aquifer States shall cooperate on the basis of sovereign equality, territorial integrity, sustainable development, mutual benefit and good faith in order to attain equitable and reasonable utilization and appropriate protection of their transboundary aquifers or aquifer systems.

2. For the purpose of paragraph 1, aquifer States should establish joint mechanisms of cooperation.

Article 8
Regular exchange of data and information

1. Pursuant to article 7, aquifer States shall, on a regular basis, exchange readily available data and information on the condition of their transboundary aquifers or aquifer systems, in particular of a geological, hydrogeological, hydrological, meteorological and ecological nature and related to the hydrochemistry of the aquifers or aquifer systems, as well as related forecasts.

2. Where knowledge about the nature and extent of a transboundary aquifer or aquifer system is inadequate, aquifer States concerned shall employ their best

efforts to collect and generate more complete data and information relating to such aquifer or aquifer system, taking into account current practices and standards. They shall take such action individually or jointly and, where appropriate, together with or through international organizations.

3. If an aquifer State is requested by another aquifer State to provide data and information relating to an aquifer or aquifer system that are not readily available, it shall employ its best efforts to comply with the request. The requested State may condition its compliance upon payment by the requesting State of the reasonable costs of collecting and, where appropriate, processing such data or information.

4. Aquifer States shall, where appropriate, employ their best efforts to collect and process data and information in a manner that facilitates their utilization by the other aquifer States to which such data and information are communicated.

Article 9
Bilateral and regional agreements and arrangements

For the purpose of managing a particular transboundary aquifer or aquifer system, aquifer States are encouraged to enter into bilateral or regional agreements or arrangements among themselves. Such agreements or arrangements may be entered into with respect to an entire aquifer or aquifer system or any part thereof or a particular project, programme or utilization except insofar as an agreement or arrangement adversely affects, to a significant extent, the utilization by one or more other aquifer States of the water in that aquifer or aquifer system, without their express consent.

Part three
Protection, preservation and management

Article 10
Protection and preservation of ecosystems

Aquifer States shall take all appropriate measures to protect and preserve ecosystems within, or dependent upon, their transboundary aquifers or aquifer systems, including measures to ensure that the quality and quantity of water retained in an aquifer or aquifer system, as well as that released through its discharge zones, are sufficient to protect and preserve such ecosystems.

Article 11
Recharge and discharge zones

1. Aquifer States shall identify the recharge and discharge zones of transboundary aquifers or aquifer systems that exist within their territory. They shall take appropriate measures to prevent and minimize detrimental impacts on the recharge and discharge processes.

2. All States in whose territory a recharge or discharge zone is located, in whole or in part, and which are not aquifer States with regard to that aquifer or aquifer system, shall cooperate with the aquifer States to protect the aquifer or aquifer system and related ecosystems.

Article 12
Prevention, reduction and control of pollution

Aquifer States shall, individually and, where appropriate, jointly, prevent, reduce and control pollution of their transboundary aquifers or aquifer systems, including through the recharge process, that may cause significant harm to other aquifer States. Aquifer States shall take a precautionary approach in view of uncertainty about the nature and extent of a transboundary aquifer or aquifer system and of its vulnerability to pollution.

Article 13
Monitoring

1. Aquifer States shall monitor their transboundary aquifers or aquifer systems. They shall, wherever possible, carry out these monitoring activities jointly with other aquifer States concerned and, where appropriate, in collaboration with competent international organizations. Where monitoring activities cannot be carried out jointly, the aquifer States shall exchange the monitored data among themselves.

2. Aquifer States shall use agreed or harmonized standards and methodology for monitoring their transboundary aquifers or aquifer systems. They should identify key parameters that they will monitor based on an agreed conceptual model of the aquifers or aquifer systems. These parameters should include parameters on the condition of the aquifer or aquifer system as listed in article 8, paragraph 1, and also on the utilization of the aquifers or aquifer systems.

Article 14
Management

Aquifer States shall establish and implement plans for the proper management of their transboundary aquifers or aquifer systems. They shall, at the request of any of them, enter into consultations concerning the management of a transboundary aquifer or aquifer system. A joint management mechanism shall be established, wherever appropriate.

Article 15
Planned activities

1. When a State has reasonable grounds for believing that a particular planned activity in its territory may affect a transboundary aquifer or aquifer system and thereby may have a significant adverse effect upon another State, it shall, as far as practicable, assess the possible effects of such activity.

2. Before a State implements or permits the implementation of planned activities which may affect a transboundary aquifer or aquifer system and thereby may have a significant adverse effect upon another State, it shall provide that State with timely notification thereof. Such notification shall be accompanied by available technical data and information, including any environmental impact assessment, in order to enable the notified State to evaluate the possible effects of the planned activities.

3. If the notifying and the notified States disagree on the possible effect of the planned activities, they shall enter into consultations and, if necessary,

negotiations with a view to arriving at an equitable resolution of the situation. They may utilize an independent fact-finding body to make an impartial assessment of the effect of the planned activities.

Part four
Miscellaneous provisions

Article 16
Technical cooperation with developing States

States shall, directly or through competent international organizations, promote scientific, educational, technical, legal and other cooperation with developing States for the protection and management of transboundary aquifers or aquifer systems, including, inter alia:

(a) Strengthening their capacity-building in scientific, technical and legal fields;

(b) Facilitating their participation in relevant international programmes;

(c) Supplying them with necessary equipment and facilities;

(d) Enhancing their capacity to manufacture such equipment;

(e) Providing advice on and developing facilities for research, monitoring, educational and other programmes;

(f) Providing advice on and developing facilities for minimizing the detrimental effects of major activities affecting their transboundary aquifer or aquifer system;

(g) Providing advice in the preparation of environmental impact assessments;

(h) Supporting the exchange of technical knowledge and experience among developing States with a view to strengthening cooperation among them in managing the transboundary aquifer or aquifer system.

Article 17
Emergency situations

1. For the purpose of the present article, "emergency" means a situation, resulting suddenly from natural causes or from human conduct, that affects a transboundary aquifer or aquifer system and poses an imminent threat of causing serious harm to aquifer States or other States.

2. The State within whose territory the emergency originates shall:

(a) Without delay and by the most expeditious means available, notify other potentially affected States and competent international organizations of the emergency;

(b) In cooperation with potentially affected States and, where appropriate, competent international organizations, immediately take all practicable measures necessitated by the circumstances to prevent, mitigate and eliminate any harmful effect of the emergency.

3. Where an emergency poses a threat to vital human needs, aquifer States, notwithstanding articles 4 and 6, may take measures that are strictly necessary to meet such needs.

4. States shall provide scientific, technical, logistical and other cooperation to other States experiencing an emergency. Cooperation may include coordination of international emergency actions and communications, making available emergency response personnel, emergency response equipment and supplies, scientific and technical expertise and humanitarian assistance.

Article 18
Protection in time of armed conflict

Transboundary aquifers or aquifer systems and related installations, facilities and other works shall enjoy the protection accorded by the principles and rules of international law applicable in international and non-international armed conflict and shall not be used in violation of those principles and rules.

Article 19
Data and information vital to national defence or security

Nothing in the present articles obliges a State to provide data or information vital to its national defence or security. Nevertheless, that State shall cooperate in good faith with other States with a view to providing as much information as possible under the circumstances.